

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 15, 2021**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARTHA V.,

Plaintiff,

v.

ANDREW SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 1:19-CV-03068-RHW

**ORDER GRANTING IN PART  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
REMANDING FOR ADDITIONAL  
PROCEEDINGS**

**(ECF Nos. 11 & 12)**

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 11 & 12. Plaintiff brings this action seeking judicial review of the Commissioner's final decision denying her application for Disability Insurance Benefits under Title II of the Social Security Act ("Act"), 42 U.S.C. §§ 401-433. *See* Administrative Record ("AR") at 1-3, 15-28. After reviewing the administrative record and briefs filed by the parties, the Court is now fully

1 informed. For the reasons set forth below, the Court **DENIES** Defendant’s Motion  
2 for Summary Judgment and **GRANTS IN PART** Plaintiff’s Motion for Summary  
3 Judgment, and remands for further proceedings as set forth in this decision.

#### 4 **I. JURISDICTION**

5 Plaintiff filed her application for Disability Insurance Benefits on September  
6 23, 2015. AR 15. She alleged a disability onset date of July 17, 2015. *Id.* Plaintiff’s  
7 application was initially denied on November 16, 2015, (AR 77-84), and her  
8 request for reconsideration was denied on February 18, 2016 (AR 97-98).

9 Administrative Law Judge (“ALJ”) Laura Valente held a hearing on April 5,  
10 2018 and heard testimony from Plaintiff and vocational expert Michael Swanson.  
11 AR 39-73. On April 25, 2018, the ALJ issued a decision finding Plaintiff ineligible  
12 for disability benefits. AR 15-27. The Appeals Council denied Plaintiff’s request  
13 for review on February 13, 2019. AR 1-3. Plaintiff, through counsel, sought  
14 judicial review by this Court on April 11, 2019. ECF No. 1, at 3. Under 42 U.S.C.  
15 § 405(g), Plaintiff’s claims are properly before this Court.

#### 16 **II. SEQUENTIAL EVALUATION PROCESS**

17 The Act defines disability as the “inability to engage in any substantial  
18 gainful activity by reason of any medically determinable physical or mental  
19 impairment which can be expected to result in death or which has lasted or can be  
20

1 expected to last for a continuous period of not less than twelve months.” 42 U.S.C.  
2 § 423(d)(1)(A).

3 The Commissioner has established a five-step sequential evaluation process  
4 for determining whether a claimant is disabled within the meaning of the Act. 20  
5 C.F.R. § 404.1520(a)(4); *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir.  
6 2006).

7 At step one, the Commissioner considers the claimant’s work activity. 20  
8 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful  
9 activity,” the Commissioner must find that the claimant is not disabled. 20 C.F.R.  
10 § 416.920(b).

11 If the claimant is not engaged in substantial gainful activity, the analysis  
12 proceeds to step two. At this step, the Commissioner considers the severity of the  
13 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from  
14 “any impairment or combination of impairments which significantly limits [his or  
15 her] physical or mental ability to do basic work activities,” the analysis proceeds to  
16 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy  
17 this severity threshold, however, the Commissioner must find that the claimant is  
18 not disabled. 20 C.F.R. § 416.920(c).

19 At step three, the Commissioner compares the claimant’s impairment to  
20 severe impairments recognized by the Commissioner to be so severe as to preclude

1 a person from engaging in substantial gainful activity. 20 C.F.R.  
2 § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
3 enumerated impairments, the Commissioner must find the claimant disabled and  
4 award benefits. 20 C.F.R. § 416.920(d).

5 If the severity of the claimant's impairment does not meet or exceed the  
6 severity of the enumerated impairments, the Commissioner must pause to assess  
7 the claimant's residual functional capacity ("RFC"), defined generally as the  
8 claimant's ability to perform physical and mental work activities on a sustained  
9 basis despite his or her limitations. 20 C.F.R. § 416.945(a)(1).

10 At step four, the Commissioner considers whether, in view of the claimant's  
11 RFC, the claimant is capable of performing work that he or she has performed in  
12 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is  
13 capable of performing past relevant work, the Commissioner must find that the  
14 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of  
15 performing such work, the analysis proceeds to step five.

16 At step five, the Commissioner should conclude whether, in view of the  
17 claimant's RFC, the claimant is capable of performing other work in the national  
18 economy. 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the  
19 Commissioner must also consider vocational factors such as the claimant's age,  
20 education, and past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant

1 is capable of adjusting to other work, the Commissioner must find that the claimant  
2 is not disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of  
3 adjusting to other work, the analysis concludes with a finding that the claimant is  
4 disabled and is therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

5 In steps one through four, the burden of proof rests upon the claimant to  
6 establish a prima facie case of entitlement to disability benefits. *Tackett v. Apfel*,  
7 180 F.3d 1094, 1098-99 (9th Cir. 1999). This burden is met once the claimant  
8 establishes that physical or mental impairments prevent her from engaging in her  
9 previous occupations. 20 C.F.R. § 404.1520(a). If the claimant cannot engage in  
10 her previous occupations, the ALJ proceeds to step five and the burden shifts to the  
11 Commissioner to demonstrate that (1) the claimant is capable of performing other  
12 work; and (2) such work exists in “significant numbers in the national economy.”  
13 20 C.F.R. § 404.1560(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 388-89 (9th Cir.  
14 2012).

### 15 III. STANDARD OF REVIEW

16 A district court’s review of a final decision of the Commissioner is governed  
17 by 42 U.S.C. § 405(g). The scope of review under Section 405(g) is limited, and  
18 the Commissioner’s decision will be disturbed “only if it is not supported by  
19 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,  
20 1158-59 (9th Cir. 2012). Substantial evidence means ““more than a mere scintilla

1 but less than a preponderance; it is such relevant evidence as a reasonable mind  
2 might accept as adequate to support a conclusion.” *Sandgate v. Chater*, 108 F.3d  
3 978, 980 (9th Cir. 1997) (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.  
4 1995)). In determining whether the Commissioner’s findings are supported by  
5 substantial evidence, “a reviewing court must consider the entire record as a whole  
6 and may not affirm simply by isolating a specific quantum of supporting  
7 evidence.” *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting  
8 *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989)).

9 In reviewing a denial of benefits, a district court may not substitute its  
10 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.  
11 1992). If the evidence in the record “is susceptible to more than one rational  
12 interpretation, [the court] must uphold the ALJ’s findings if they are supported by  
13 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,  
14 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
15 2002). Moreover, a district court “may not reverse an ALJ’s decision on account of  
16 an error that is harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it  
17 is inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at 1115.  
18 The burden of showing that an error is harmful generally falls upon the party  
19 appealing the ALJ’s decision. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

**IV. STATEMENT OF FACTS**

The facts of the case are set forth in detail in the transcript of proceedings and only briefly summarized here. Plaintiff was 39 years old on the alleged disability onset date. AR 27. She completed four years of college and is able to communicate in English. AR 27, 229. Plaintiff has past relevant work as a legal assistant and lab technician. AR 27, 216.

Plaintiff suffers from systemic lupus erythematosus (“lupus” or “SLE”), which the ALJ found to be a severe impairment. AR 15. Plaintiff was diagnosed with lupus in 2006 when she developed a malar rash, joint pain, and aphthous ulcers. AR 628. The State agency medical consultant confirmed the diagnosis of lupus and considered it a severe impairment. AR 15-16. Plaintiff also filed her disability claim based on the following conditions: fibromyalgia, lumbar fusion surgery, bilateral carpal tunnel syndrome, and bilateral ulnar nerve compression syndrome. AR 86.

**V. THE ALJ’S FINDINGS**

The ALJ determined that Plaintiff has not been under a disability within the meaning of the Act at any time from July 17, 2015, the date of Plaintiff’s alleged disability onset, through May 10, 2018, the date the ALJ issued her decision. AR 15-28.

1       **At step one**, the ALJ found that Plaintiff meets the insured status  
2 requirements of the Act through December 31, 2020, and that she has not engaged  
3 in substantial gainful activity since the alleged disability onset date. (citing 20  
4 C.F.R. §§ 404.1571 *et seq.*). AR 18.

5       **At step two**, the ALJ found that Plaintiff has the following severe  
6 impairments: “degenerative disc disease, connective tissue disease, carpal tunnel  
7 syndrome, systemic lupus erythematosus, endometriosis, and left upper extremity  
8 AC joint separation.” AR 18.

9       **At step three**, the ALJ found that Plaintiff does not have an impairment or  
10 combination of impairments that meet or medically equals the severity of the listed  
11 impairments in 20 C.F.R. Section 404, Subpart P, Appendix 1. AR 21. The ALJ  
12 found that Plaintiff’s reported asthma is not a severe impairment and does not  
13 cause significant limitation in her ability to perform basic, work-related activities.  
14 AR 18. Similarly, the ALJ found that Plaintiff’s reported fibromyalgia does not  
15 constitute a medically determinable impairment because the record evidence with  
16 respect to this condition does not meet the necessary criteria. AR 19. Plaintiff’s  
17 other impairments listed as “problems” were not found to be severe impairments  
18 by the ALJ. AR 19. The ALJ also found that Plaintiff’s SLE did not meet the  
19 listing requirement under Listing 14.02 of Title 20 of the Code of Federal  
20 Regulations, Subpart P, Appendix 1. AR 21. The ALJ found that Plaintiff’s SLE



1 does not involve two or more organs or bodily systems with at least one being  
2 involved at least to a moderate level of severity; nor does she exhibit at least two of  
3 the constitutional symptoms of SLE. *Id.* The ALJ found that the medical evidence  
4 demonstrated that Plaintiff's lupus was well controlled with medication. *Id.*

5 **a. Mental Impairments**

6 The ALJ afforded significant weight to Morgan Liddell, M.D., a psychiatric  
7 consultative examiner, and Vincent Gollogly, Ph.D, a State agency psychological  
8 consultant. AR 19-20. From their reports and Plaintiff's subjective complaints  
9 about her mental health, the ALJ found that her mental impairments of "major  
10 depressive disorder, generalized anxiety disorder, and somatic symptoms disorder"  
11 cause only minimal limitation on her ability to perform basic mental work and are  
12 therefore "nonsevere." AR 20.

13 **At step four**, the ALJ found that Plaintiff has the RFC to perform light  
14 work, as defined in 20 C.F.R. § 404.1567(b), with some exceptions. AR 21.  
15 Plaintiff can lift and carry twenty pounds occasionally and ten pounds frequently.  
16 *Id.* She can sit for six hours out of an eight-hour workday but requires frequent  
17 changes of position lasting only a few seconds. *Id.* Similarly, standing and walking  
18 can be performed six hours combined in an eight-hour workday. *Id.* The ALJ found

1 she can occasionally push and pull with the right lower<sup>1</sup> extremity, such as  
2 operation of foot pedals. *Id.* She cannot climb ladders, ropes, or scaffolds. *Id.* She  
3 must avoid concentrated exposure to extreme cold and heat, vibrations, pulmonary  
4 irritants, and hazards such as heights and dangerous moving machinery. *Id.*

5 The ALJ found that Plaintiff is capable of performing past relevant work as a  
6 lab technician and a legal assistant. AR 26. Such work would not require the  
7 performance of tasks precluded by Plaintiff's RFC. *Id.*

8 The ALJ alternatively determined at step five of the sequential evaluation  
9 process that in light of Plaintiff's age, education, work experience, and RFC, there  
10 are jobs that exist in significant numbers in the national economy that she can  
11 perform. AR 27. These include mail room clerk, office helper, and storage facility  
12 rental clerk. AR 28.

13 Accordingly, the ALJ concluded that Plaintiff has not been under a disability  
14 for the relevant period. *Id.*

## 15 VI. ISSUES FOR REVIEW

16 Plaintiff argues that the Commissioner legally erred and the decision was not  
17 supported by substantial evidence. Specifically, she argues the ALJ reversibly  
18 erred by: (1) concluding that the severity of her SLE does not meet Listing 14.02A;

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19  
20 <sup>1</sup> The ALJ erroneously stated "upper extremity" when finding that Plaintiff can use  
foot pedals, and the Court assumes the ALJ meant "lower extremity" in this  
context. AR 21.

(2) failing to provide specific, clear, and convincing reasons to discredit Plaintiff's testimony; (3) discounting the lay witness statements of Plaintiff's husband and her former employer; and (4) failing to fully and fairly develop the record by declining to order a physical consultative examination or medical interrogatories regarding Plaintiff's physical impairments. ECF No. 11 at 1.

## VII. DISCUSSION

### **A. It is unclear from the record and the ALJ's explanation whether Plaintiff's systemic lupus erythematosus (SLE) meets the severity of Listing 14.02A.**

Listing 14.02A, SLE, is met where the individual's lupus involves "two or more organs/body systems," with "[o]ne of the organs or body systems involved to at least a moderate level of severity;" and the claimant experiences "[a]t least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss)." 20 C.F.R. Pt. 404 Subpt. P, App. 1, § 14.02.<sup>2</sup> Plaintiff

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<sup>2</sup> Alternatively, the listing can be met if the claimant shows:

Repeated manifestations of [lupus], with at least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss) and one of the following at the marked level:

1. Limitation of activities of daily living.
2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

*Id.*

1 contends that her SLE affected her skin, mental functioning, and her immune  
2 system, and her symptoms in these areas are at least moderately severe. ECF No.  
3 11 at 5-6. Next, she contends that she consistently experiences the constitutional  
4 symptoms of severe fatigue and malaise. *Id.* at 6. Plaintiff concedes that no treating  
5 or examining medical source opined regarding the severity of her SLE or her  
6 resulting functional limitations. ECF No. 13 (Reply Br.) at 3. Because the record  
7 lacks a medical opinion as to the severity of Plaintiff's SLE and the resulting  
8 impact on her ability to work, this Court remands to the ALJ for further  
9 proceedings.

10       The record needs further development to determine if Plaintiff's SLE  
11 renders her per se disabled. As for Plaintiff's contention that the SLE affects her  
12 skin, the malar rash and photosensitivity are well-documented in Plaintiff's  
13 medical records. Similarly, Plaintiff subjectively contends that her immunity is  
14 severely compromised, AR 58, and that her mental functioning is impaired, AR 63.  
15 Morgan Liddell, M.D., a psychiatric consultative examiner found that Plaintiff's  
16 lupus did not render her incapable of performing work that she had done in the  
17 past. AR 434-40. Dr. Liddell examined Plaintiff in February 2016 and noted that  
18 Plaintiff complained of worsening mental health and symptoms of depression and  
19 anxiety. *Id.* Although Dr. Liddell's exam confirmed that Plaintiff's mental  
20 functioning was fully intact, it gave very little insight into the severity of Plaintiff's

1 impairments due to lupus other than to say that she reports lupus flares that result  
2 in joint swelling and sever pain. AR 436. In a disability determination explanation,  
3 Howard Platter, M.D., opined that the medical evidence demonstrated infrequent  
4 lupus flares which were specifically attributable to environmental changes from  
5 extreme heat and cold. AR 93. Dr. Platter did not examine Plaintiff, instead relying  
6 heavily on Dr. Liddell's psychological report. *See* AR 87-88. At the ALJ hearing,  
7 Plaintiff's counsel noted the disconnect between the focus of Dr. Liddell's exam  
8 and Plaintiff's underlying application of disability benefits based on lupus. AR 74-  
9 75. The ALJ declined Plaintiff's request to develop the record further. AR 75  
10 (taking request under advisement); AR 15-16.

11       This Court cannot determine from the record evidence whether Plaintiff's  
12 lupus meets Listing 14.02A. The record demonstrates a claimant who has suffered  
13 from lupus for over 10 years and who self-reports that flare-ups occur monthly  
14 lasting from 7 to 15 days, during which time she is unable to complete daily tasks  
15 due to pain and discomfort. Her medical records confirm her lupus and her self-  
16 reporting of symptoms. What the medical records do not provide is a professional  
17 medical opinion as to the severity of her lupus which would identify whether her  
18 condition meets Listing 14.02A. The ALJ erred in ruling out the applicability of  
19 Listing 14.02A without further developing the record.

1 On the present record, Plaintiff has clearly shown that the disease severely  
2 impacted her skin. And notably, skin and “immune system disorders (inflammatory  
3 arthritis)” are listed as body systems that can be commonly affected by SLE. 20  
4 C.F.R. Pt. 404, Subpt. P, at App. 1, Listing 14.00.D.1.a. In addition, Listing 14.00  
5 identifies the following potential constitutional symptoms: “neurologic (seizures)  
6 mental (anxiety, fluctuating cognition (‘lupus fog’), mood disorders, organic brain  
7 syndrome, psychosis).” *Id.*

8 Because the ALJ’s decision does not address any of the affected body  
9 systems or Plaintiff’s alleged constitutional symptoms, this Court cannot determine  
10 why the ALJ found that Listing 14.02 was not met. This Court rejects the  
11 Defendant’s contention that the ALJ’s use of “[a]s explained below” in the  
12 decision makes clear why Listing 14.02A is not met. Furthermore, this Court will  
13 refrain from making such a determination sua sponte because the ALJ is in a better  
14 position to make these findings.

15 **B. The ALJ is instructed to reevaluate whether Plaintiff provided**  
16 **inconsistent statements after receiving additional medical opinion**  
**evidence.**

17 Next, Plaintiff argues that the ALJ erred by rejecting Plaintiff’s symptom  
18 testimony without providing clear and convincing reasons for doing so. ECF No.  
19 11 at 9. An ALJ engages in a two-step analysis to determine whether a claimant’s  
20 testimony regarding subjective symptoms is credible. *Tommasetti v. Astrue*, 533

1 F.3d 1035, 1039 (9th Cir. 2008). First, the claimant must produce objective  
2 medical evidence of an underlying impairment or impairments that could  
3 reasonably be expected to produce some degree of the symptoms alleged. *Id.*  
4 Second, if the claimant meets this threshold, and there is no affirmative evidence  
5 suggesting malingering, “the ALJ can reject the claimant’s testimony about the  
6 severity of [her] symptoms only by offering specific, clear, and convincing reasons  
7 for doing so.” *Id.* Questions of credibility on resolutions of conflict of testimony  
8 are to be resolved by the ALJ. *Id.*

9 In weighing a claimant’s credibility, the ALJ may consider many factors,  
10 including, “(1) ordinary techniques of credibility evaluation, such as the claimant’s  
11 reputation for lying, prior inconsistent statements concerning the symptoms, and  
12 other testimony by the claimant that appears less than candid; (2) unexplained or  
13 inadequately explained failure to seek treatment or to follow a prescribed course of  
14 treatment; and (3) the claimant’s daily activities.” *Smolen v. Chater*, 80 F.3d 1273,  
15 1284 (9th Cir. 1996). When evidence reasonably supports either confirming or  
16 reversing the ALJ’s decision, the Court may not substitute its judgment for that of  
17 the ALJ. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

18 Here, the ALJ found that the medically determinable impairments could  
19 reasonably be expected to produce the symptoms Plaintiff alleges; however, the  
20 ALJ determined that Plaintiff’s statements of intensity, persistence, and limiting

1 effects of the symptoms were not entirely consistent with the medical evidence and  
2 other evidence in the record. AR 22.

3 **1. Inconsistency findings**

4 Dr. Liddell noted that Plaintiff “is willing to work in whatever setting would  
5 be functionally possible [given] her physical limitations.” AR 437. The ALJ  
6 concluded that Plaintiff’s subjective complaints of fatigue were inconsistent with  
7 her filing for unemployment where she declared she was ready, willing and able to  
8 perform similar work that she performed as a legal assistant. AR 25. However,  
9 Plaintiff’s former employer Darrell Smart stated that Plaintiff was terminated as a  
10 legal assistant because of excessive absences due to her back surgery, lupus, and a  
11 fibromyalgia-type condition. AR 320. He also noted that she suffered from mental  
12 health issues that affected her concentration and attention to detail. AR 321. The  
13 ALJ attributed Plaintiff’s desire to find gainful employment as inconsistent with a  
14 claim of total disability. AR 25. However, Plaintiff’s distress from losing her job  
15 and her receipt of unemployment benefits does not automatically render her  
16 ineligible for disability benefits given her documented health conditions.

17 The ALJ found apparent inconsistencies between Plaintiff’s testimony and  
18 her statements to treating providers. AR 23. First, the ALJ found that her testimony  
19 regarding serious side effects from prednisone contradicted her report that her  
20 symptoms were “mild” at their worst. AR 27 (citing AR 524). The ALJ gleaned



1 this comment from an Emergency Room report where Plaintiff fainted in  
2 December 2015 resulting in a concussion. AR 524. The report notes symptoms of  
3 “double vision, incontinence, neck pain, seizure, tinnitus, weakness in extremities,  
4 [and] generalized weakness.” *Id.* “The patient has not experienced similar  
5 symptoms in the past.” *Id.* While this visit was specific to her black-out and  
6 concussion, it does not appear to negate a generalized grievance that taking  
7 steroidal medication for lupus flares has negative side effects. *See* AR 63 (*Plaintiff*  
8 *Testimony*) (“[I]f my doctor prescribes Prednisone, it just kills me. Prednisone is  
9 worse than . . . having the lupus. . . . it doesn’t knock me out, but it just drains  
10 me.”).

11 Furthermore, the ALJ found that Plaintiff’s allegations of seriously limiting  
12 back pain are inconsistent with statements to treating providers. AR 23 (Citing AR  
13 771). In the doctor visit referred to by the ALJ, Plaintiff was seen for a follow-up  
14 for “abrupt onset of facial twitching” which resolved spontaneously. AR 771. This  
15 report noted that her right-side sciatic pain previously resolved with lumbar spine  
16 surgery and that she had not experienced any recurrence of back pain or radicular  
17 pain. AR 771. Indeed, this seems inconsistent with Plaintiff’s testimony that she  
18 has debilitating back pain when bending over. *See* AR 57 (Plaintiff claiming that  
19 she gets shooting pain in her back when bending to do the laundry). However, this  
20 two-page medical report demonstrates ample evidence of chronic neuropathy and

1 ongoing treatment for lupus. AR 771-72. The Court is doubtful that showing  
2 improvement due to her back surgery in this singular medical note serves to  
3 discredit Plaintiff's testimony regarding ongoing back pain or other symptoms.

4 Next, the ALJ found Plaintiff to be inconsistent about her ability to walk,  
5 highlighting Dr. Vani Bremjit's report in July 2017 that Plaintiff walks three miles  
6 per day for exercise. AR 23 (citing AR 544). However, when Plaintiff testified, she  
7 confirmed that she used to walk three miles per day but stopped due to pain on her  
8 feet. AR 51-52. This testimony was consistent with the visit to Dr. Bremjit in July  
9 2017 where she presented with "worsening pain and paresthesia<sup>3</sup> in the feet."

10 Furthermore, the ALJ found that Plaintiff's reported marijuana use was  
11 inconsistent with Dr. Liddell's report. AR 25, 437. According to the ALJ, Plaintiff  
12 testified that she does not use marijuana, but that she had a marijuana card to  
13 obtain ointment that had little beneficial effect. AR 25. In Dr. Liddell's February  
14 2016 report, Plaintiff acknowledged using 1-2 marijuana edibles for back pain, but  
15 stated she had not used marijuana since July 2015. AR 437. Contrary to the ALJ's  
16 finding, these two statements are not inconsistent. At her hearing, she  
17 acknowledged that she previously had a medical marijuana card. AR 59. Plaintiff's  
18  
19

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20 <sup>3</sup> Paresthesia refers to a burning or prickling sensation that is usually felt in the  
hands, arms, legs, or feet. [https://www.ninds.nih.gov/Disorders/All-  
Disorders/Paresthesia](https://www.ninds.nih.gov/Disorders/All-Disorders/Paresthesia) (last visited March 3, 2021).

1 denial of marijuana use at the April 2018 hearing was not inconsistent with her  
2 statement to Dr. Liddell. *Compare* AR 59 with AR 437.

3 The Court makes these observations not to usurp the fact-finding role of the  
4 ALJ. *See Tackett*, 180 F.3d at 1098 (when the evidence would reasonably support  
5 more than one outcome, this Court shall not substitute its judgment for that of the  
6 ALJ). Instead, the Court notes that without additional medical opinion evidence,  
7 the ALJ's inconsistency findings may not meet the "clear and convincing reasons"  
8 standard. *See Morgan*, 169 F.3d at 599. The Court need not decide whether the  
9 ALJ erred in this regard in light of the decision to remand for additional  
10 proceedings.

## 11 **VIII. CONCLUSION**

12 For the reasons stated, the ALJ did not fully develop the record with respect  
13 to the severity of Plaintiff's SLE.

14 The ALJ shall further develop the record by directing Plaintiff to undergo a  
15 new consultative examination to assist the ALJ in assessing Plaintiff's functioning  
16 during the relevant time period. The ALJ shall reassess Plaintiff's impairments and  
17 functioning at step three of the sequential evaluation process and specifically  
18 reexamine whether Plaintiff meets or equals Listing 14.02A. The ALJ shall  
19 reevaluate Plaintiff's subjective complaints, formulate a new RFC determination,  
20 and obtain supplemental testimony from a vocational expert, if necessary. Because

1 remand is ordered, the Court will not reach the remaining issues raised by Plaintiff.  
2 With respect to consideration of lay testimony, the ALJ may reassess such  
3 testimony in light of the developed record.

4 Accordingly, **IT IS ORDERED:**

5 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is **GRANTED**  
6 **IN PART** to the extent the Court remands for additional proceedings.

7 2. Defendant's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.

8 3. The Case is remanded to the ALJ for additional proceedings consistent  
9 with this order.

10 4. Judgment shall be entered in favor of **Plaintiff** and the file shall be  
11 **CLOSED**.

12 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
13 Order, forward copies to counsel.

14 **DATED** this 15th day of March, 2021.

15 s/Robert H. Whaley  
16 ROBERT H. WHALEY  
17 Senior United States District Judge  
18  
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20